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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 439/2024**

TK ELEVATOR INDIA PRIVATE LIMITED Petitioner

Through: Mr. Kaustubh Prakash, Mr.
Shammi Kapoor, Mr. Lavish
Sharma, Advocates.

versus

HINDUSTAN PREFAB LIMITED Respondent

Through: Mr. Varun Nischal, Mr. Shubham
Sharma, Advocates with Mr.
Mukesh Kumar, Legal In-Charge
[8368166429].

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.05.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Tender Notice dated 14.09.2015 for installation of lifts in the premises of the National Institute of Health and Family Welfare complex at Munirka, New Delhi. Notice was issued in this petition on 04.04.2024. A reply has been filed by the respondent, but the same is not on record. The reply filed by the respondent is handed up in Court and is taken on record.

2. Mr. Kaustubh Prakash, learned counsel for the petitioner, relies upon an arbitration clause contained in Clause 23 of the Special Conditions of Contract [“SCC”]. After some correspondence between the



parties, the petitioner invoked the arbitration clause by a notice dated 22.11.2023.

3. Pursuant to notice issued on 04.04.2024, Mr. Varun Nishcal, learned counsel, enters appearance on behalf of the respondent and submits that the existence of an arbitration clause is admitted, but the pre-arbitration procedure specified in Clause 25 of the General Conditions of Contract [“GCC”] has not been complied with.

4. Mr. Nischal draws my attention to a judgment of a Coordinate Bench dated 10.10.2022 in *Garg Builders vs. Hindustan Prefab Ltd.* [ARB.P. 47/2020 and connected matters] wherein it was held that the two clauses must be harmoniously interpreted.

5. Learned counsel for both parties submit that the disputes may be referred to the Dispute Resolution Committee [“DRC”] under Clause 25 of the GCC and may thereafter be referred to arbitration if the SCC is not able to resolve their disputes to their mutual satisfaction.

6. Having regard to the above, the petition is disposed of with the following directions:

- A. The petitioner’s claims will be referred to the DRC constituted by the respondent by Office Order dated 07.12.2022. The DRC will attempt to resolve the disputes within ninety days as contemplated in the GCC.
- B. In the event the parties do not arrive at a mutually acceptable resolution within the aforesaid period, the disputes arising out of the Tender Notice dated 14.09.2015 will be referred to arbitration to be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New



Delhi [“DIAC”]. Either party may approach the DIAC for this purpose.

- C. DIAC is requested to nominate an arbitrator from its panel.
 - D. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
 - E. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
 - F. All rights and contention of the parties are left open for adjudication by the learned Arbitrator.
7. The petition is disposed of in terms of the above.

PRATEEK JALAN, J

MAY 16, 2024
‘Bhupi’/